IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2238 OF 1999

C.Muthusamy ...Petitioner.
Versus
State of Maharashtra & Ors. ...Respondents.

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None for the Petitioner.
Mr.M.M.Deshmukh, APP, for the State-R.1.
Ms.Purvi Chhatre, Advocate for Respondent No.2.
Respondent No.3-served.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : JULY 31, 2006.

P.C.:

1. Heard the learned Advocate for the petitioner, the learned Advocate for Respondent No.2-original complainant, and learned APP for the State-Respondent No.1.

2. The petitioner in this petition is facing prosecution in Criminal Case No.1987/S/97 pending before the learned Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai; The said case is under Section 138 of the Negotiable Instruments Act.

3. The petitioner’s case is that as winding up

petitions have been preferred in respect of the company, the petitioner could not make any payment and any such payment made by them would amount to disposition of the property of the company within the meaning of Section 526(2) of the Companies Act and hence, would be void. One of the directors of **Orkay Industries**, has filed petition before this Court raising the very same contentions, as has been raised by the present petitioner. In this case, the Division Bench of this Court held as follows :

> . "We see no conflict between section 138 of the Negotiable Instruments Act and Section 536(2) read with Section 441(2) of the Companies Act. As stated above, the two operate in separate fields. In any case, as stated above, the offence is complete on the 15th day after receipt of the notice by virtue of non-payment and if during that period there was no voidness then a subsequent order of winding up has no effect

on the offence which has already been committed."

. The above judgment has been challenged in Appeal before the Supreme Court by one of the Directors of Orkay Industries Ltd., Mr.Pankaj Mehra by filing a SLP.

. In the said SLP the said questions raised and the questions raised in the present matter, are the same. The said SLP has been disposed of and the decision is reported in **AIR 2000 S.C. 1953 : AIR SCW 2000 991 (Pankaj Mehra Vs. State of Maharashtra).** In the said decision the view taken by this Court has been upheld.

4. In view of the above, no case is made out to entertain the present Petition. Hence, the Writ Petition is disposed of. Interim stay granted earlier stands vacated.

(SMT.V.K.TAHILRAMANI,J.)